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Via ECF

March 14, 2023

Hon. Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *American Civil Liberties Union, et al. v. National Security Agency, et al.*, No. 23-cv-00907 (LJL)

Dear Judge Liman:

We represent Plaintiffs in the above-referenced Freedom of Information Act (“FOIA”) lawsuit, and we submit this letter on behalf of both parties in advance of the status conference scheduled for 3:00 p.m. on March 21, 2023, as required by the Court’s February 14, 2023 order. ECF No. 18.

Through this FOIA lawsuit, Plaintiffs seek recent opinions issued by the Foreign Intelligence Surveillance Court (“FISC”) addressing novel or significant issues, including opinions addressing the government’s surveillance activities under Section 702 of the Foreign Intelligence Surveillance Act. *See* Compl. (ECF No. 1). Plaintiffs believe these records are urgently needed to inform the public debate about whether Congress should reauthorize or reform Section 702. *See id.* ¶¶ 3-5, 29; Dustin Volz, *Biden Administration Urges Congress to Renew Spy Law*, Wall St. J., Feb. 28, 2023.¹

While the Court’s order scheduling the initial conference set forth certain information for the parties to include in a standard case management plan, the parties respectfully submit that, because this is an action pursuant to FOIA, a typical discovery schedule is not warranted at this time. Rather, the critical schedule at this juncture is the schedule for the agencies’ production of the requested documents.

Defendants’ answer is currently due March 15, 2023. Defendants have informed Plaintiffs that they have located the only two responsive records, which are FISC opinions, and that ODNI is already reviewing those opinions for public disclosure under its separate transparency process outside of FOIA. Defendants are not able to provide a date certain for the

¹ <https://www.wsj.com/articles/expiring-spy-law-vital-to-combating-hackers-and-rivals-like-china-officials-say-e37d9d56>

disclosure of these documents, but they have previously indicated that at least one of the opinions “will shortly be released by ODNI.” DOJ Letter dated Feb. 28, 2023, at 4.²

Because Defendants’ ongoing review may soon result in release of one or more responsive records to Plaintiffs, the parties respectfully propose that they provide a further status report to the Court in 30 days, on **April 13, 2023**, and to extend the government’s time to answer through the same date. If the responsive records have not been produced to Plaintiffs by that date, the parties will submit a proposed processing schedule to the Court (or the parties’ respective proposed schedules if they cannot reach agreement).

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Sarah Taitz

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² <https://int.nyt.com/data/documenttools/doj-report-recent-efforts-to-strengthen-fisa-compliance-02-28/d4a33986faf10197/full.pdf>